

AMENDED IN SENATE JUNE 20, 2007

AMENDED IN ASSEMBLY MAY 2, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 938

Introduced by Assembly Member Charles Calderon

February 22, 2007

An act to add Chapter ~~24.5 (commencing with Section 15000)~~ 27 (*commencing with Section 16100*) to Division 7 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 938, as amended, Charles Calderon. Regional water management.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements for the discharge of stormwater in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act, and the Porter-Cologne Water Quality Control Act. Various programs finance regional water management planning.

This bill would authorize a county, or a city under certain circumstances, to convene one or more watershed *water* quality committees to develop and facilitate cooperation in achieving local water quality solutions. If convened, the committee would be required to include one member representing the appropriate regional board. The committee would be authorized to prepare a specified work plan *for the development of a watershed water quality management plan*, for approval by the regional board under specified circumstances. The committee would be required to use reasonable efforts to prepare, and

submit to the regional board for its approval, a watershed *water quality* management plan within 3 years of the date on which the regional board approves the work plan. The *watershed water quality* management plan would be required to address major sources of stormwater, urban runoff, and nonpoint source pollution within the region to which the plan applies.

The bill would authorize a city ~~or~~, county, *or special district* that provides water, sanitation, or refuse collection services to design, acquire, construct, operate, maintain, and furnish facilities for the diversion, interception, or collection of *surface runoff, including* urban runoff, stormwater, *and* other forms of runoff, *the treatment of pollutants in these waters* subject to waste discharge requirements, and ~~nonpoint source pollution, the treatment of these waters, the return of these waters to receiving water bodies enhance beneficial uses of waters of the state,~~ or the beneficial use or reuse of these waters. The bill would specify that ~~a city or county may exercise powers granted to that city, county, or special district by existing law~~ *a public entity to which it is applicable may impose fees and charges to construct, operate, and maintain these facilities, and perform related activities to implement this authority.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature hereby finds and declares all of*
- 2 *the following:*
- 3 (a) *Uncontrolled pollutants in urban runoff, stormwater, other*
- 4 *forms of runoff, and nonpoint source pollution can present*
- 5 *significant water quality problems and challenges to the State of*
- 6 *California. In many instances, pollutants in runoff adversely affect*
- 7 *the state's rivers, streams, lakes, bays, estuaries, and beaches. The*
- 8 *effective management and control of pollutants in runoff are*
- 9 *challenging tasks because of the diffuse nature of the pollution*
- 10 *sources, the massive volumes of runoff flow involved, and the*
- 11 *unpredictable and intermittent nature of runoff volumes and their*
- 12 *pollutant loads and concentrations.*
- 13 (b) *This act provides and encourages innovative solutions to*
- 14 *meet obligations imposed under the Porter-Cologne Water Quality*
- 15 *Control Act ("Porter-Cologne") and the Federal Water Pollution*
- 16 *Control Act implemented pursuant to Porter-Cologne, including*

1 *the provision of a framework for increased cooperation and*
2 *collaboration, among the regional boards, local governments, and*
3 *watershed stakeholders, to help remedy pollution that can result*
4 *from uncontrolled runoff and other nonpoint sources. This act*
5 *calls for the voluntary formation of water quality committees that*
6 *will bring to bear in a cooperative framework the expertise,*
7 *knowledge, and resources of local governments, special districts,*
8 *and stakeholders in developing watershed-based, water quality*
9 *solutions.*

10 *(c) Uncontrolled pollutants in urban runoff, stormwater, other*
11 *forms of runoff, and other nonpoint source pollution can adversely*
12 *affect surface waters and their designated beneficial uses, including*
13 *water supply, public health and recreation, and the support of*
14 *aquatic and other wildlife. For these reasons, federal and state*
15 *lawmakers have enacted various provisions of law to regulate*
16 *these waters, and, in California, the water boards administer*
17 *regulatory programs to implement these statutory authorities.*

18 *(d) Currently, total maximum daily loads (TMDLs), municipal*
19 *stormwater permits, nonpoint source policies, implementation*
20 *plans, and other initiatives to regulate pollutants in surface water*
21 *runoff place significant technical and financial burdens on local*
22 *governments. Given other important demands on county and city*
23 *budgets and limited availability of local funding mechanisms, local*
24 *governments and other regulated stakeholders find it difficult to*
25 *develop and fund the water quality management control facilities*
26 *and programs called for by these regulatory programs.*

27 *(e) This act will enable counties, cities, and water, sanitation,*
28 *and refuse collection special districts to finance, construct, and*
29 *operate facilities to control, treat, and improve the quality of runoff*
30 *and other nonpoint source flows. By doing so, this act encourages*
31 *local agencies to develop and implement long-term, locally based,*
32 *watershed and subwatershed scale, feasible projects to remedy*
33 *pollution associated with runoff and other nonpoint source flows.*
34 *Significant benefits to water quality are expected to result from*
35 *clarifying the authority of local agencies to finance, operate, and*
36 *construct those water quality management and control facilities.*

37 *(f) Construction, maintenance, operation, and financing of*
38 *facilities and systems for the diversion, interception, or collection*
39 *of surface runoff, including urban runoff and stormwater, the*
40 *treatment of pollutants in these waters as required by waste*

1 discharge or other regulatory water quality control requirements,
2 and the return of these waters to receiving water bodies to enhance
3 beneficial uses, or the beneficial use or reuse of these waters, are
4 essential parts of providing effective sewer, water, and refuse
5 collection services, are critical to providing for the protection of
6 beneficial uses, including water supply uses, for the waters of the
7 state, and are necessary responses to the requirements of existing
8 and future water quality regulatory programs, and to the
9 maintenance of public health.

10 SEC. 2. Chapter 27 (commencing with Section 16100) is added
11 to Division 7 of the Water Code, to read:

12
13 *CHAPTER 27. THE REGIONAL WATERSHED RUNOFF*
14 *MANAGEMENT AND FUNDING ACT OF 2008*

15
16 *Article 1. Definitions*

17
18 16100. For purposes of this chapter, the following definitions
19 apply:

20 (a) "Stormwater" includes stormwater runoff, snow melt runoff,
21 and surface runoff and drainage associated therewith, including
22 rising ground waters, spring flows, and similar flows.

23 (b) "Surface runoff pollution" includes pollutants contained in
24 or mobilized by surface flows, including nonpoint source pollution
25 and pollutants in stormwater runoff, urban runoff, and other
26 surface water flows.

27 (c) "Urban runoff" means runoff from developed or urbanized
28 areas, including stormwater and nonstormwater surface flows
29 such as, without limitation, irrigation return flows, groundwater
30 discharges from subdrains, foundation drains, footing drains,
31 air-conditioning condensation, flows from water lines, discharges
32 from potable water sources, and other individual residential,
33 institutional, or commercial surface discharges.

34 (d) "Watershed water quality plans" are plans that address, at
35 a watershed or subwatershed scale, major sources of stormwater
36 pollutants, urban runoff pollutants, and other surface runoff
37 pollution within the designated region to which the plan applies,
38 and include, but are not necessarily limited to, both of the
39 following:

1 (1) *The technical tasks and activities and facilities identified as*
2 *necessary or important to meet surface water runoff water quality*
3 *regulatory requirements.*

4 (2) *An economic analysis and finance plan to provide reasonable*
5 *assurance of the implementation of the identified tasks, activities,*
6 *and facilities for a specific watershed area by those who are*
7 *responsible for developing watershed water quality plans.*

8
9 Article 2. Watershed Water Quality Committees

10
11 16100.5. (a) *Each county may convene one or more watershed*
12 *water quality committees for the purpose of developing and*
13 *facilitating cooperation in achieving local water quality solutions*
14 *for control of surface runoff pollution consistent with the objectives*
15 *of the Porter Cologne Water Quality Control Act and the federal*
16 *Clean Water Act. Each county may establish subcommittees or*
17 *separate committees for each watershed, or portion thereof, within*
18 *its jurisdiction. If a county declines to convene a committee or*
19 *subcommittee for a particular watershed, any city or cities, the*
20 *boundaries of which encompass a substantial portion of that*
21 *watershed, may convene a watershed quality committee for that*
22 *watershed.*

23 (b) *For the purpose of convening a watershed quality committee*
24 *each county or city shall consult with any special district and*
25 *regional water management group, as defined in Section 10537,*
26 *to determine whether the special district, regional water*
27 *management group, or any of the regional water management*
28 *group's members, desires to be part of the committee.*

29 (c) *Each watershed water quality committee shall be led by the*
30 *city or county convening it and, when convened, the committee*
31 *shall consist of at least one member representing the appropriate*
32 *regional board, as well as at least one member each from entities*
33 *representing resource agencies, water agencies, sanitation*
34 *districts, the environmental community, landowners, business and*
35 *industry representatives, and, where appropriate, agricultural*
36 *interests.*

37 (d) *Watershed water quality committee members shall not be*
38 *entitled to any additional or special compensation for their service*
39 *on the committee.*

1 (e) *Public officers associated with any area of government,*
2 *including planning or water, and whether elected or appointed,*
3 *may participate in and may serve as members of a watershed water*
4 *quality committee.*

5
6 Article 3. *Watershed Water Quality Management Plans*
7

8 16101. (a) *Upon a determination by a county or city to convene*
9 *a watershed water quality committee, other state agencies shall*
10 *support and participate in the development of a watershed water*
11 *quality management plan, and each committee shall prepare a*
12 *work plan for the development of a watershed water quality*
13 *management plan. A watershed water quality management plan*
14 *shall not include within its scope any previously established plan*
15 *or project being implemented by an agency under other statutory*
16 *authority to meet or assist in meeting regulatory requirements*
17 *associated with urban runoff, stormwater, or nonpoint source*
18 *pollution, except with the express consent of that agency.*

19 (b) *The work plan shall provide a detailed description of the*
20 *tasks and activities the committee will undertake, and the work*
21 *products that it anticipates will be necessary to prepare a*
22 *watershed water quality management plan, including a preliminary*
23 *characterization of the nature of natural, background surface*
24 *water quality and surface runoff pollution, and potential surface*
25 *runoff water quality solutions that the work plan will evaluate for*
26 *purposes of meeting regulatory requirements associated with*
27 *pollutants in urban runoff and stormwater, and other nonpoint*
28 *source pollution, including, but not necessarily limited to,*
29 *municipal stormwater permits, total maximum daily load regulatory*
30 *requirements, nonpoint source pollutant control policies and*
31 *implementation plans, and a proposed schedule for its activities*
32 *required to prepare a watershed water quality management plan.*
33 *The work plan shall be prepared consistent with the*
34 *Porter-Cologne Water Quality Control Act, including provisions*
35 *governing the preparation of water quality control plans.*

36 (c) *If the watershed water quality committee determines that*
37 *the watershed water quality management plan will be an effective*
38 *mechanism for complying with one or more regulatory*
39 *requirements imposed by a regional water quality control board,*
40 *the work plan shall not become effective unless approved by the*

1 regional board with jurisdiction over enforcement of the regulatory
2 requirements within the watershed or watersheds that are the
3 subject of the work plan. The regional board may approve the
4 work plan, or return the work plan to the committee with specific
5 comments for modification, or revision of the work plan for
6 additional consideration by the committee, and in the committee's
7 sole discretion, action, and resubmission to the regional board.

8 (d) The regional board shall act upon any work plan not later
9 than 60 days from the date on which the committee submits or
10 resubmits the work plan to the regional board.

11 (e) A regional board may not unreasonably delay, withhold, or
12 condition its approval of a work plan. Pursuant to Section 13320,
13 the state board may review the failure of a regional board or
14 executive officer to approve a work plan that meets the
15 requirements of this section.

16 16102. (a) Each watershed water quality committee shall use
17 reasonable efforts to prepare and submit to the regional board a
18 watershed water quality management plan within three years of
19 the date on which a regional board approves the work plan. A
20 committee may update periodically its watershed plan to take into
21 account new water quality information or regulatory programs
22 or standards, and may submit any revised or new plan for approval
23 to the regional board.

24 (b) If the watershed quality committee determines that a
25 watershed water quality management plan will be a mechanism
26 for complying with one or more regulatory requirements imposed
27 by a regional water quality control board, the watershed runoff
28 management plan shall not become effective unless approved
29 pursuant to the procedures of Section 16105 by the regional board
30 with jurisdiction over enforcement of the regulatory requirements
31 within the watershed or watersheds that are the subject of the
32 management plan.

33 16103. Each watershed water quality management plan shall
34 address major sources of pollutants in stormwater and urban
35 runoff, and other surface runoff pollution within the region to
36 which the plan applies, and shall include all of the following
37 elements relevant to these waters as contained in this section:

38 (a) A description of the actions that will effect protection and
39 enhancement of designated beneficial uses of the waters of the
40 state, consistent with regulatory requirements and the prevention

1 of nuisance, and the attainment of the highest water quality that
2 is reasonable, considering natural water quality, controllable
3 water quality factors, and all demands being made and to be made
4 on the subject waters.

5 (b) Recommendations for appropriate action by any entity,
6 public or private, to improve water quality, a time schedule for
7 the actions to be taken, and description of surveillance to be
8 undertaken to determine improvement in water quality.

9 (c) A coordinated economic analysis and financing plan that
10 provides reasonable assurances that the watershed water quality
11 management plan will be implemented, and that balances the water
12 quality improvements anticipated to result from implementation
13 of the management plan with the economic and societal costs of
14 these improvements, developing where feasible use-based
15 approaches that place the cost of managing and treating surface
16 runoff pollution on the generators of the pollutants, as an
17 alternative to imposing these costs as an incident of real property
18 ownership. Elements of this financing plan may include any or all
19 of the following:

20 (1) Fees and charges pursuant to Sections 16104 and 16106.

21 (2) Financial participation and appropriate funding from
22 federal, state, and local sources.

23 (3) Funding from private sources to support implementation of
24 plan elements that will produce water quality benefits related to
25 compliance with regulatory requirements that would otherwise be
26 imposed on individuals or categories of persons, parcels, projects,
27 or activities.

28 (d) To the extent applicable, each plan shall contain regional
29 or subregional best management practices, watershed-based
30 natural treatment systems, low-flow diversion systems, or other
31 measures constituting structural treatment best management
32 practices that will protect designated beneficial uses, and assist
33 in attainment of water quality standards, or facilitate compliance
34 with regulatory water quality control requirements governing
35 surface runoff pollution.

36 (e) A determination of the water quality conditions that could
37 be reasonably achieved by the watershed water quality
38 management plan through the coordinated management of all
39 controllable factors that affect water quality in the area, including
40 the natural background quality of the region's runoff, surface

1 waters and groundwater supply, and the need for water
2 conservation and reuse.

3 (f) A description of the proposed structure, operations, powers,
4 and duties of an implementing entity for the watershed water
5 quality management plan, such as a joint powers authority or
6 group of stakeholders, and a memorandum of understanding among
7 public and private plan participants to outline respective
8 responsibilities, relationships, and funding sources, and to ensure
9 effective implementation of the plan.

10 16104. Fees may be imposed to support the preparation and
11 implementation of watershed water quality plans approved by a
12 regional board provided that the plans will facilitate compliance
13 with one or more regulatory obligations. Fees imposed pursuant
14 to this section shall mitigate the actual or anticipated adverse
15 effects of the feepayer's activities that contribute to surface runoff
16 pollution and the water quality benefit provided by implementation
17 of the watershed water quality management plan, and the amount
18 of the fees shall bear a fair and reasonable relationship to those
19 effects.

20 16105. (a) A regional board shall act upon any watershed
21 water quality management plan submitted for approval by a
22 watershed quality committee not later than 60 days from the date
23 on which the committee submits the plan to the regional board.
24 The regional board may approve the watershed water quality
25 management plan, or return the plan to the committee with specific
26 comments for modification or revision of the plan for consideration
27 by the committee, and, in the committee's sole discretion, action
28 and resubmission of the plan. In the event that the committee
29 resubmits any watershed water quality management plan, before
30 or after initial approval by the regional board, the regional board
31 shall act on the resubmission as set forth in this section not later
32 than 60 days from the date of resubmission of the plan. A regional
33 board may not unreasonably delay, withhold, or condition its
34 approval of a watershed water quality management plan.

35 (b) Regional boards shall consider watershed water quality
36 plans for adoption as water quality control plans, or as the basis
37 for an amendment to a water quality control plan that conforms
38 to the watershed water quality management plan.

39 (c) Pursuant to Section 13320, the state board may review the
40 actions or failures to act by a regional board under this chapter.

1 *If the state board determines that a watershed plan is supported*
2 *by substantial evidence, complies with this chapter, and is not*
3 *otherwise contrary to law, it shall require or uphold approval of*
4 *the plan, and its adoption as a component of a regional water*
5 *quality control plan, or as the basis for a conforming amendment*
6 *to a regional water quality control plan.*

7 *(d) A regional water management group, as defined in Section*
8 *10537, may adopt a watershed water quality management plan*
9 *prepared pursuant to this chapter, in whole or in part, as a regional*
10 *plan, as defined in Section 10536, or as part of a regional water*
11 *plan.*

12
13 *Article 4. Stormwater Management*
14

15 *16106. (a) A city, county, or special district that provides*
16 *water, sanitation, or reuse collection services may design, acquire,*
17 *construct, retrofit, operate, maintain, and furnish facilities for the*
18 *diversion, interception, or collection of surface runoff, including*
19 *urban runoff, stormwater, and other forms of runoff, the treatment*
20 *of pollutants in these waters subject to waste discharge*
21 *requirements and other water quality regulatory requirements,*
22 *and the return of these waters to receiving water bodies to enhance*
23 *beneficial uses of waters of the state, or the beneficial use or reuse*
24 *of these waters.*

25 *(b) A public entity described in subdivision (a) may impose fees*
26 *and charges to construct, operate, and maintain these facilities,*
27 *and perform related activities. The fees and charges may be*
28 *imposed on the generators of the runoff, stormwater, and nonpoint*
29 *source pollution as user-based or regulatory fees consistent with*
30 *this chapter.*

31 ~~SECTION 1. The Legislature finds and declares all of the~~
32 ~~following:~~

33 ~~(a) The people of the State of California have a strong desire to~~
34 ~~have clean beaches, oceans, rivers, and streams.~~

35 ~~(b) Stormwater runoff can adversely affect water quality.~~

36 ~~(c) The development of comprehensive, effective, adequately~~
37 ~~funded, and appropriately maintained stormwater quality~~
38 ~~management systems would enhance water quality outcomes, while~~
39 ~~also providing a mechanism for long-term management.~~

1 ~~(d) Municipal stormwater permits and the imposition of total~~
2 ~~maximum daily load restrictions are placing an increasing burden~~
3 ~~on cities, counties, and private and public entities to solve complex~~
4 ~~and costly water quality problems.~~

5 ~~(e) Partnerships among cities and counties with appropriate~~
6 ~~water agencies and other special districts that are willing to provide~~
7 ~~comprehensive stormwater management service will benefit the~~
8 ~~environment, property owners, and local governments, and could~~
9 ~~yield water supply benefits.~~

10 ~~(f) Existing law authorizes certain entities to construct and~~
11 ~~operate stormwater management facilities. Broadening this~~
12 ~~authority to apply to all appropriate water districts will provide an~~
13 ~~opportunity for the development of effective and beneficial~~
14 ~~partnerships to more effectively treat stormwater in various~~
15 ~~watersheds throughout the state, thereby improving water quality.~~

16 ~~SEC. 2. Chapter 24.5 (commencing with Section 15000) is~~
17 ~~added to Division 7 of the Water Code, to read:~~

18
19 ~~CHAPTER 24.5. REGIONAL WATER MANAGEMENT~~

20
21 ~~Article 1. Watershed Quality Committees~~

22
23 ~~15000. (a) Each county may convene one or more watershed~~
24 ~~quality committees for the purpose of developing and facilitating~~
25 ~~cooperation in achieving local water quality solutions. Each county~~
26 ~~may establish subcommittees or separate committees for each~~
27 ~~watershed, or portion thereof, within its jurisdiction. If a county~~
28 ~~declines to convene a committee or subcommittee for a particular~~
29 ~~watershed, any city or cities, the boundaries of which encompass~~
30 ~~a substantial portion of that watershed, may convene one or more~~
31 ~~committees for that watershed.~~

32 ~~(b) For the purpose of convening a committee, each county or~~
33 ~~city shall consult with any existing regional water management~~
34 ~~group, as defined in Section 10537, to determine whether the~~
35 ~~regional water management group, or any of its members, desires~~
36 ~~to be part of the committee.~~

37 ~~(c) Each committee shall consist of at least one member~~
38 ~~representing the appropriate regional board, as well as other~~
39 ~~interested parties, including members from resource agencies,~~

1 water and sanitation districts, the environmental community, land
2 owners, industry, and agriculture.

3 ~~(d) Committee members shall not be entitled to any~~
4 ~~compensation for their service on the committee.~~

5 ~~(e) Public officers associated with any area of government,~~
6 ~~including planning or water, and whether elected or appointed,~~
7 ~~may be appointed to, and may serve as members of, a committee.~~

8
9 Article 2. ~~Watershed Management Plans~~

10
11 15001. ~~(a) Each committee may prepare a work plan providing~~
12 ~~a detailed description of the tasks and activities it will undertake,~~
13 ~~and the work product that it anticipates will be the result of its~~
14 ~~efforts, including a preliminary characterization of the nature of~~
15 ~~water quality solutions it will evaluate for purposes of meeting~~
16 ~~regulatory requirements associated with urban runoff, stormwater,~~
17 ~~and nonpoint source pollution, including, but not limited to,~~
18 ~~requirements relating to municipal stormwater permits and total~~
19 ~~maximum daily loads established pursuant to Section 303(d) of~~
20 ~~the Clean Water Act (33 U.S.C. Sec. 1313(d)), and a proposed~~
21 ~~schedule for its activities.~~

22 ~~(b) If the committee determines that the watershed management~~
23 ~~plan will be the mechanism for complying with one or more~~
24 ~~regulatory requirements imposed by a regional board, the work~~
25 ~~plan shall not be implemented unless approved by the regional~~
26 ~~board with jurisdiction over the watershed or watersheds that are~~
27 ~~the subject of the work plan. The regional board may approve the~~
28 ~~work plan or return the work plan to the committee for additional~~
29 ~~consideration and resubmission to the regional board.~~

30 15002. ~~Each committee shall use reasonable efforts to prepare~~
31 ~~and submit to the regional board a watershed management plan~~
32 ~~within three years of the date on which the regional board approves~~
33 ~~the work plan. A committee may update periodically its watershed~~
34 ~~management plan and may submit any revised or new plan to the~~
35 ~~regional board.~~

36 15003. ~~Each watershed management plan shall address major~~
37 ~~sources of stormwater, urban runoff, and nonpoint source pollution~~
38 ~~within the region to which the plan applies and shall include a~~
39 ~~coordinated economic analysis and financing plan to implement~~
40 ~~the watershed plan.~~

Article 3. ~~Stormwater Management~~

~~15005. (a) (1) A city or county that provides water, sanitation, or refuse collection services may design, acquire, construct, operate, maintain, and furnish facilities for the diversion, interception, or collection of urban runoff, stormwater, other forms of runoff subject to waste discharge requirements, and nonpoint source pollution, the treatment of these waters, the return of these waters to receiving water bodies, or the beneficial use or reuse of these waters.~~

~~(2) In order to carry out the powers granted under this section, a city or county may exercise any of the powers otherwise granted to that city or county by law to the extent those powers may be made applicable.~~

~~(3) This chapter does not affect any obligation of a city or county to obtain a permit that may be required by law for the activities undertaken pursuant to this chapter.~~

~~(b) A special district that provides water, sanitation, or refuse collection services may request from the Legislature to be authorized by statute to perform any of the actions authorized for cities and counties under subdivision (a), if it does not already have the statutory authority to perform these actions. When requesting authorization, a special district may provide information to the Legislature indicating that the special district has the expertise and knowledge to perform the activities referenced under subdivision (a) and that there is a need in its jurisdiction for the special district to provide these services.~~